

File

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
RODERICK L. FRIESE AND GARY)
FRIESE d.b.a. FRIESE BROTHERS)
CEDAR PRODUCTS,)
Appellants,)
v.)
PUGET SOUND AIR POLLUTION CONTROL)
AGENCY,)
Respondent.)

PCHB No. 1100

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A formal hearing was held before the Pollution Control Hearings Board, W. A. Gissberg, presiding, Art Brown and Chris Smith on February 24, 1977 in Seattle, Washington.

Respondent was represented by its attorney, Keith D. McGoffin. Appellants were represented by their attorney, Kameron C. Cayce.

Having heard the testimony, having examined the exhibits, and being fully advised, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Pursuant to RCW 43.21B.260, respondent has filed a certified copy of its Regulation I and amendments thereto, which we notice.

II.

Appellants' business, a small cedar stake mill, is located near Eucley. On November 17, 1975, at appellants' request, respondent's inspector visited the property and inspected a large pile of cedar wastes. The inspector explained that it was unlawful to burn such wastes outdoors. Approval was given for one burn in order to dispose of the pile, however.

III.

On November 19, 1975, the inspector returned with "Notice of Construction and Application for Approval" forms and a design by Puget Sound Air Pollution Control Agency (hereinafter PSAPCA) for a wood waste burner which has successfully been used to dispose of wood wastes from small sawmill operations without violating the standards of Regulation I.

IV.

Appellants thereafter, and on their own initiative, took the PSAPCA design and attempted to construct a suitable small wood waste burner. The materials cost appellants about \$479 for the size of burner which they thought was adequate. Because of the small operation, there was not enough continuous supply of waste materials to maintain a hot fire. The burner did work when supplied with a proper amount of waste material, however.

Appellants did not submit a Notice of Construction form to respondent.

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1 for approval nor did they request assistance from respondent.

2 V.

3 On August 18, 1976, while on routine inspection of air contaminant
4 source sites, respondent's inspector found a five to ten square foot
5 smoldering area in appellants' 10x20x50 foot wood waste pile. No flames
6 were observed. The inspector did not find anyone on the immediate premises
7 Appellants did not have a PSAPCA permit to conduct an outdoor fire and
8 had been refused a permit to burn prior to this occurrence.

9 On September 13, 1976 a notice of violation was sent to appellants
10 by certified letter. For this occurrence, appellants were assessed a
11 \$250.00 civil penalty which is the subject matter of this appeal.

12 VI.

13 Appellants have difficulty in disposing of their cedar wood
14 wastes. Although people living nearby take about eighty percent of the
15 scrap with appellants' permission, there is a residual accumulation each
16 month which should be disposed of. Appellants have not burned the
17 wastes since the imposition of the instant civil penalty and wood wastes
18 have been accumulating since then. There is an expressed concern of
19 the Washington State Department of Natural Resources that the existing
20 accumulated waste pile constitutes a fire hazard. Appellants have no
21 feasible alternative to disposing of the waste materials but to burn them.

22 VII.

23 The PSAPCA-designed burner, although "crude" and difficult to regulate
24 has been successfully used at small sawmills such as that operated by
25 appellant. If properly designed, constructed, and operated, the device
26 would meet air pollution emission standards. If not properly designed,

27 FINDINGS OF FACT,
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constructed, or operated, improper combustion and emissions will result, which emissions would violate the standards of Regulation I.

Because small mills characteristically operate intermittently, there is a lack of a continuous supply of waste materials. The lack of continuous feeding of waste materials into a device similar to the PSAPCA-designed burner would cause improper operation. It is necessary for appellants to solve the problem of matching the device to their operation or to seek another solution.

VIII.

The notice of construction procedures used by PSAPCA would aid an applicant such as appellants and their engineer (should they hire one), in that they would learn about the critical areas of construction and use of the PSAPCA-designed burner.

IX.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II.

Appellants violated Section 8.05(1) of Regulation I on August 18, 1976 by causing or allowing an outdoor fire other than residential or land clearing burning without having first received written approval

FINDINGS OF FACT,
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1 therefor from respondent. Appellants do not deny such burning but ask
2 that the penalty be conditionally suspended.

3 III.

4 It is apparent that appellants have attempted to solve their
5 wood waste problem. They have, on their own, invested \$479 plus
6 their time and effort in an attempt to construct what they estimated
7 was an adequate wood waste burner. When the burner failed to meet
8 their expectations, appellants apparently abandoned it in favor of
9 burning the waste materials outdoors. Had appellants sought proper advice
10 for their operation, their efforts and resources would have been more
11 effectively used.

12 It remains for appellants to seek a solution to their problem.
13 Section 1.01 of respondent's Regulation I provides for the uniform
14 administration and enforcement of the regulation. Appellants, like
15 other citizens and businesses, are expected to and must conform to the
16 established rules. Although appellants' attempt to comply with the
17 rules was, in their own estimation, ineffectual, they are nonetheless
18 required to meet emission standards set by those rules. That appellants
19 have difficulty in reaching a solution does not thereby excuse noncompliance
20 with the regulation.

21 IV.

22 The \$250.00 civil penalty assessed pursuant to Section 3.29 of
23 Regulation I should be affirmed.

24 V.

25 Any Finding of Fact which should be deemed a Conclusion of Law
26 is hereby adopted as such.

27 FINDINGS OF FACT,
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1 From these conclusions, the Board enters this

2 ORDER

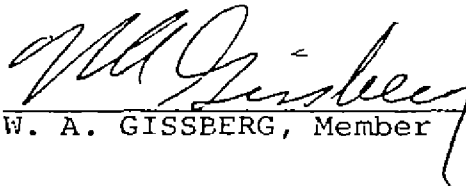
3 The \$250.00 civil penalty is affirmed, provided however, that
4 the entire civil penalty is suspended upon condition that appellants
5 receive approval for, and construct, a suitable wood waste burner
6 within six months from the date of this order.

7 DATED this _____ day of March, 1977.

8 POLLUTION CONTROL HEARINGS BOARD

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10 ART BROWN, Chairman

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12 W. A. GISSBERG, Member

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14 CHRIS SMITH, Member

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26 FINDINGS OF FACT,
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